

"'Lottery' includes any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot" (The underlining is ours).

In our view, the essence of a lottery is the distribution of money or money's worth which is determined by lot or chance. The elements of distribution and chance must both be present. In the present case the element of chance had been determined by the draw of the M.C.A. lottery, but no distribution had taken place. It is unnecessary for us to decide at what given moment any particular lottery is concluded, but in our view of the facts of this case the Magistrate was correct in finding that the lottery was still in progress. We are in agreement with the conclusion reached in the unreported case of *Chua Chong Chut & Ors. v. Public Prosecutor*⁽²⁾, where in the course of his judgment Thomson J. said:—

"A lottery for the purposes of the Ordinance is defined (s. 2) as including 'any game, method or device whereby money or money's worth is distributed or allotted', and I see nothing repugnant to common sense in saying that such a lottery is in progress until it has been completed, that is to say, until the distribution or allotment of the money or money's worth involved has been itself completed."

For these reasons we dismiss the appeal against conviction.

As regards sentence, Sir Roland has submitted that the sentences were excessive. He pointed out that the first appellant was regarded by the prosecution as the promoter and yet was being less severely punished than his assistants. He did not consider that a sentence of imprisonment was merited in respect of the 1st appellant and that the previous conviction for an offence under the Betting Enactment should not have been taken into consideration.

We do not consider that a sentence of imprisonment for offences of this kind necessarily provide a deterrent, and consideration should always be given to the imposition of a substantial fine with a view to avoiding the necessity of sending persons to prison who have committed offences which are not *mala per se*. We would point out that the sentences of imprisonment in default of payment of the fines in respect of the 2nd and 3rd appellants are not in accordance with section 281 of the Criminal Procedure Code, which only permits of a maximum sentence of 6 months in default where the maximum term of imprisonment for the offence does not exceed two years.

We allow the appeals against sentence, quash the sentences and substitute:—

in respect of the 1st appellant—a fine of \$3,000 or six months in default;

in respect of the 2nd appellant—a fine of \$2,000 or four months in default;

in respect of the 3rd appellant—a fine of \$1,000 or three months in default.

In exercise of our powers of revision, we quash the sentence on the 3rd accused in the original trial and substitute a sentence of a fine of \$2,000 or four months in default of payment.

Order accordingly.

Solicitors: *Braddell & Ramani*.

TOH KIM SOO v. REGINA

[A. Cr. J. (Murray-Aynsley C.J.) November 10, 1954]

[Singapore—Magistrate's Appeal No. 174 of 1954]

Liquors Revenue Ordinance (S.S. Cap. 225), s. 83—Seizure of motor vehicle—Procedure where there is no prosecution—Proof of facts that goods found were intoxicating liquor—Criminal Procedure Code, s. 427.

In this case a motor vehicle had been seized by the customs as the goods found in it were alleged to be "intoxicating liquor". There was no prosecution. Notice was given of the seizure under s. 83(3) of the Liquors Revenue Ordinance and the appellant claimed the vehicle. An enquiry was held and the learned Magistrate found as a result of the enquiry that an offence under the Ordinance had been committed and that the vehicle was used in connection with the offence. He therefore made an order for forfeiture. At the trial, a certificate from the Chief Chemist was admitted to show that the bottles found in the car contained intoxicating liquor.

Held: the certificate was not admissible as s. 427 of the Criminal Procedure Code is limited in its scope to an inquiry, trial or other proceeding under the Code, and therefore the order of the Magistrate must be set aside.

MAGISTRATE'S APPEAL.

G. J. Okell for the appellant.

J. F. McWilliam (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Murray-Aynsley C.J.:—These proceedings arose under section 83 of the Liquors Revenue Ordinance (Cap. 225) and concerned a motor vehicle.

No prosecution took place and the alleged liquor and the vehicle were found without an apparent owner. Notice was given under section 83(3) and the present appellant claimed the vehicle. The Ordinance does not say what is to be done in such a case, but the Magistrate proceeded to hear and determine the issue as to whether an offence under the Ordinance had been committed and as to whether the vehicle had been used in connection with such offence. On the strength of his findings he made an order for forfeiture.

Assuming the procedure to be correct, the only question is whether his findings of fact were justified. Substantially the points to be considered are whether there was evidence that the goods seized were intoxicating liquors within the meaning of section 2 of

the Ordinance, and whether in that case they were dutiable within the meaning of the same section.

As regards the second point, as there was no prosecution I do not think that the presumption under section 76 applies. However, when people are found at 9 p.m. landing from a sampan bottles labelled Hennessy's Brandy and stamped "Singapore duty not paid", there is evidence on which a Court can find that duty had not been paid.

In order to prove that the contents were "intoxicating liquor" the prosecution produced a certificate. This certificate did not in terms say how much "pure alcohol by weight" there was in the contents but merely the percentage of proof spirit. I think that this certificate is sufficient although it would have been more satisfactory if it followed the terms of the definition. The more substantial question is as to whether the matter could be proved by a certificate. Section 427 of the Criminal Procedure Code is limited in its scope to "any inquiry trial or other proceeding under this Code". I do not think that the particular proceedings were under the Criminal Procedure Code. By section 3 the Criminal Procedure Code is only applied to the enquiry into and trial of offences. Therefore I think the certificate was not admissible and the chemist should have been called.

The order of the Magistrate is set aside.

Order for forfeiture set aside.

Solicitors: *Braddell Bros.*

PERIANNAN & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Wilson J.) September 17, 1954]

[K. L. — Criminal Appeals Nos. 72, 73, 74, & 75 of 1954]

Emergency Regulations, 1951, regs. 11 & 12 — Jurisdiction of Sessions Court — Persons found out of doors during curfew hours — Sentence of 5 years' imprisonment or fine of \$5,000 or to both such imprisonment and fine — Courts Ordinance, 1948, ss. 63, 64, 85 & 87 — Powers of Magistrate's Court — Emergency (Criminal Trials) Regulations, 1948, reg. 20A.

The accused persons in these cases pleaded guilty to charges that they were found out of doors during curfew hours. They were tried by a Magistrate. It was argued that the Magistrate had no jurisdiction to try these cases. Reg. 12 of the Emergency Regulations, 1951, gives power to a Sessions Court, with one limitation, to try any offence against the Regulations but limits the power of sentence to one of 5 years' imprisonment, or a fine of \$5,000, or to both such imprisonment and fine. It was argued that without this regulation even a Sessions Court could not try a case under the Emergency Regulations as it was said that under the Courts Ordinance it could not pass a sentence of imprisonment and a fine.

Held: (1) a Sessions Court, in spite of the wording of s. 63 of the Courts Ordinance, can pass a sentence of

imprisonment and a fine and therefore can try a case for an offence under the Emergency Regulations, 1951; (2) similarly a First Class Magistrate has jurisdiction to try a case for an offence under the Emergency Regulations, 1951; (3) the Emergency (Criminal Trials) Regulations, 1948, reg. 20A, does not affect the right of a Magistrate to try such Emergency cases as are within his jurisdiction in the area where he normally holds jurisdiction.

MAGISTRATE'S CRIMINAL APPEALS.

Morris Edgar for the appellant.

B. Sheldon (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Wilson J. : — In these cases the accused persons were charged that they were found out of doors during curfew hours between 7 p.m. and 6 a.m. They all pleaded guilty and said that they had gone to the pictures. They were tried by a Magistrate. It has been argued before me that the Magistrate had no jurisdiction to try these cases which have come before me in revision. I have been referred to regulation 12 of the Emergency Regulations, 1951, which gives power to a Sessions Court, with one limitation, to try any offence against the Regulations but limits the power of sentence to one of five years' imprisonment, or a fine of \$5,000, or to both such imprisonment and fine. It has been argued that without this regulation even a Sessions Court could not try a case under the Emergency Regulations as it is said that under the Courts Ordinance it cannot pass a sentence of imprisonment and a fine. I have also been referred to regulation 11 which states that a person guilty of an offence against the Regulations shall be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding \$5,000, or to both such imprisonment and such fine.

The powers of a Magistrate's Court under section 85 of the Courts Ordinance are confined to trying offences in which the maximum term of imprisonment does not exceed three years or which are punishable with fine only. It has been argued that that section does not permit a Magistrate to try a case where a sentence of three years' imprisonment and a fine can be imposed. Section 63 of the Courts Ordinance, which deals with the powers of a Sessions Court, relates to offences where imprisonment does not exceed seven years or which are punishable with fine only. Section 64 of the Courts Ordinance, however, allows a Sessions Court to pass any sentence allowed by law not exceeding: (a) three years' imprisonment of either description; (b) a fine of four thousand dollars; (c) whipping up to twelve strokes; or (d) any sentence combining any of the sentences aforesaid. Obviously, a Sessions Court, in spite of the wording of section 63 of the Courts Ordinance, can pass a sentence of